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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CC Docket No. 96-45

In the Matter of )  
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Federal-State Joint Board )  
on Universal Service )  
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To the Commission:

JOINT COMMENTS OF  
EDUCATION AND LIBRARY NETWORKS COALITION

Summary

The Education and Library Networks Coalition ("EDLINC"), a coalition of groups representing public and private schools and libraries, urges the Commission to establish a standard of service and a discount methodology for schools and libraries that will fulfill the intent of Congress by delivering the full benefit of advanced telecommunications to schools and libraries everywhere in the country at affordable prices. The recommendations of the Federal/State Joint Board on Universal Service establish an excellent framework for meeting that goal, and the Commission should seek to build on the Joint Board's success.

In particular, we strongly support the key elements of the Joint Board's recommendations, including the following points. First, we concur with the Joint Board's recognition that the level of pre-discount prices is critical to achieving affordability. Second, we believe that adopting the recommendation for a stepped discount of between 20% and 90% is also critical to meeting the goal of affordability.

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Third, inclusion of internal connections is vital to ensuring that schools and libraries are able to take full advantage of the discounts on other telecommunications services. Fourth, Internet access should be eligible for discounts because we believe that all telecommunications services should be available to schools and libraries at discounted rates. And finally, flexibility in the services and functionalities available to schools and libraries and provisions encouraging the establishment of consortia will ensure that all schools and libraries will have the opportunity to obtain the full range of services they need at the best possible prices. We believe that these recommendations will be of enormous benefit in ensuring that schools and libraries in every part of the nation are able to accomplish their educational missions into the next century.

Some outstanding details, however, must still be addressed to ensure that the recommended framework is truly effective. EDLINC believes that these details can be addressed in a minimally burdensome manner. For instance, EDLINC believes that the Commission must clarify and further develop a number of the Joint Board's recommendations. The concept of the "lowest corresponding price" -- meaning the lowest price charged to similarly-situated customers -- may establish affordable rates for schools and libraries, but it is currently only vaguely defined. For example, it is not clear what is meant by a "similarly situated customer." EDLINC believes that the term should be defined broadly, to ensure that the pre-discount price is low enough to guarantee affordable rates.

EDLINC also generally supports the method recommended by the Joint Board for determining the discounted price, but notes that additional clarification of the

details of the proposal will be required. For example, school lunch program participation data may need to be adjusted or supplemented to account for entities that do not participate in the program, undercounting in rural areas, and other factors. The high cost discount also appears to be inadequate in its present form.

We also urge the Commission to ensure that the standards for determining whether a bona fide request has been made are not unduly burdensome, to permit the granting of waivers of the prohibition on resale when the end user will use the services for educational purposes, and to clarify that discounts may be taken off negotiated contract rates if those rates are lower than the lowest corresponding price.

EDLINC believes that the fund administrator should be a neutral third party, but one that has been informed on the needs of schools and libraries. Therefore, we recommend that the fund administrator include representatives of the school and library community.

Finally, the Commission should take into account the possibility that anomalous cases -- such as states with extremely high average costs or populous states that form state-wide consortia -- may absorb disproportionately large amounts of funding, leaving little left under the \$2.25 billion cap for schools and libraries in other states.

The Joint Board has made an excellent start, and we urge the Commission to build on that success.

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To the Commission:

**Introduction**

The Education and Library Networks Coalition ("EDLINC") is a coalition of groups representing public and private schools and libraries, whose members are identified at Exhibit A.<sup>1</sup> EDLINC hereby submits comments in response to the Commission's Public Notice released November 18, 1996 (the "Request for Comments"), which requested additional information and comments on a number of points raised in the Recommended Decision of the Federal-State Joint Board on Universal Service released on November 8, 1996 (the "Joint Board Recommendations").

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<sup>1</sup> Under the name of National School Boards Association *et al.*, this coalition filed comments on April 10, 1996 ("NSBA Comments"), and reply comments on May 7, 1996 ("NSBA Reply"), in response to the Notice of Proposed Rulemaking and Order Establishing the Joint Board (the "NPRM"). On August 2, 1996, EDLINC also submitted answers to some of the questions put by the Joint Board in its Public Notice of July 3, 1996 ("EDLINC Comments").

The Joint Board Recommendations represent a broad, comprehensive approach to supporting the use of telecommunications services by schools and libraries and accurately reflect the goals of the bipartisan Congressional support behind Section 254 of the Communications Act. The soundness of the Joint Board's work is emphasized by the fact that its recommendations regarding schools and libraries were unanimous, despite the complexity of the issues. The Joint Board is to be commended for its efforts to adhere to the principle of affordable access established in the law, and congratulated on its success in implementing Congressional intent in the face of a maze of competing interests and proposals.

EDLINC strongly endorses the Joint Board Recommendations. We wish to identify several general points on which we particularly agree with the Joint Board and to address some of the issues raised in the Request for Comments. There are also a number of areas in which we believe further clarification, elaboration or definition may be required if the Commission is to meet the goals of the legislation. Failure to address certain points properly may undercut the Joint Board's excellent work.

**I. THE JOINT BOARD RECOMMENDATIONS COMPLY WITH THE MANDATE OF SECTION 254 AND IF PROPERLY IMPLEMENTED WILL SUPPORT THE PROVISION OF TELECOMMUNICATIONS SERVICES TO SCHOOLS AND LIBRARIES ALL ACROSS THE COUNTRY.**

The Joint Board Recommendations accurately reflect the goals of the Snowe-Rockefeller-Exon-Kerrey Amendment. The Joint Board has provided a mechanism that promises to open access to affordable telecommunications services to schools and library throughout the nation. We urge the Commission to retain both the broad

framework of the Joint Board's recommendations, as well as most of the particular proposals.

For example, the Joint Board has recognized that the level of pre-discount prices is critical to schools and libraries, because even very generous discounts may prove inadequate if pre-discount prices are too high. Basing pre-discount rates on prices charged to similarly-situated customers can be an effective means of avoiding this problem, and we support this approach, with some modifications.<sup>2</sup>

In addition, the Joint Board Recommendations propose a series of stepped discounts, ranging from 20%-90% below the pre-discount price. Although EDLINC had proposed a sliding scale for determining discounts, we support the Joint Board's approach. We also believe that the wide range of the proposed discounts is essential if final discounted rates are to be affordable for all schools and libraries.

We also strongly support the Joint Board's recommendation that internal connections be eligible for discounts. The Joint Board correctly notes that installation and maintenance of internal connections is a service, and, therefore, within the parameters of Section 254(h)(1)(B).<sup>3</sup> Furthermore, as we argued before the Joint Board, providing discounts for internal connections is critical to ensuring the affordability and availability of services in general.<sup>4</sup> Without internal connections, services cannot be delivered to classrooms, as contemplated by the legislation,

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<sup>2</sup> Joint Board Recommendations at ¶ 535.

<sup>3</sup> Id. at ¶ 474.

<sup>4</sup> NSBA Comments at 7-8.

making it impossible to fully integrate telecommunications into the curriculum. Finally, including internal connections would advance the principle of competitive neutrality, by not favoring wireless technologies over wireline systems.

EDLINC recommended that all commercially available services be eligible for discounts.<sup>5</sup> Consequently, we strongly support the Joint Board's recommendation that basic non-content access to the Internet be eligible for discounts. Access to electronic mail and the World Wide Web has quickly become a basic means of transmitting and gathering information and will only grow in importance. If schools and libraries are not eligible for discounts on what is fast-becoming a basic element in the communications network, the purpose of Section 254 will not have been met.

In addition to providing discounts for Internet access, the Joint Board recommends that the Commission allow schools and libraries "maximum flexibility to purchase whatever package of telecommunications services they believe will meet their telecommunications service needs most effectively and efficiently."<sup>6</sup> This is exactly what EDLINC proposed to the Joint Board. Schools and libraries are in the best position to determine what services they need and allowing flexibility is the best means of encouraging schools and libraries to determine the level and type of service that best suits their requirements. Allowing maximum flexibility also advances the goal of competitive neutrality because it does not force users to request inappropriate

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<sup>5</sup> NSBA Reply at 18-20; EDLINC Comments at 8-10.

<sup>6</sup> Joint Board Recommendations at ¶ 458.



or unwanted services in an effort to take advantage of whatever discount might be available.

EDLINC also strongly supports the Joint Board's proposal to harmonize the dual federal/state regulatory structure with the legislation's goal of assuring affordable access to schools and libraries. The Joint Board has recommended that only states that adopt discount mechanisms on intrastate services that are at least equal to discounts on interstate services will be eligible for federal universal service support for schools and libraries in that state. This approach strikes an appropriate balance between federal and state prerogatives: It preserves the regulatory authority of the states over intrastate services, while offering an attractive incentive to provide a minimum discount.

Finally, we support the Joint Board Recommendations' treatment of consortia. EDLINC had called for a broad definition of which entities would be eligible for discounts, which the Joint Board did not accept. Nevertheless, the Joint Board Recommendations do permit schools and libraries to join in consortia with other customers in their communities subject to certain safeguards. As the Joint Board noted, to do otherwise "would not be in the public interest because it would serve to impede schools and libraries from becoming attractive customers or from benefitting from efficiencies."<sup>7</sup>

In short, the Joint Board has carefully considered the needs of schools and libraries and developed a proposed regulatory structure that may provide such

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<sup>7</sup> Joint Board Recommendations at ¶ 596.

institutions enormous benefits.<sup>8</sup> The Commission should adopt the Joint Board's approach, subject to the specific comments discussed below.

**II. TO ENSURE THAT THE GOALS OF SECTION 254 ARE ULTIMATELY MET, THE COMMISSION SHOULD CLARIFY AND FURTHER DEVELOP A NUMBER OF THE JOINT BOARD'S SPECIFIC RECOMMENDATIONS.**

**A. Setting the Pre-discount Price.**

In its various filings, EDLINC proposed several methods of setting what the Joint Board calls the "pre-discount price."<sup>9</sup> In particular, we advocated the use of a nationally-based pre-discount price for two reasons. First, a national benchmark based on rates in competitive markets would advance the goal of affordability by offering all schools and libraries the lowest rates possible. This would ensure that rates are not computed from an artificially high base and help ensure that the final discounted rate is as low as possible. Second, a national benchmark would allow establishment of uniform rates for the same service, thus putting all schools and libraries on a more equal footing. Although we also called for additional support for disadvantaged

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<sup>8</sup> We urge the Commission to take special care to ensure that its rules apply to the correct definitions of "elementary school," "secondary school," and "library." As noted in the separate comments of the American Library Association, the Library Services and Technology Act ("LSTA") amends the Communications Act to revise the definition of "library" and make certain other changes. The Joint Board Recommendations, however, refer to the prior definition, which has now been superseded. The Commission should also clarify that the definitions of "elementary school" and "secondary school," which are imported from the Elementary and Secondary Education Act of 1965 ("ESEA"), incorporate any amendments to those definitions contained in amendments to the ESEA or the Improving America's Schools Act of 1994. These definitions should be conformed to any subsequent legislation as well.

<sup>9</sup> NSBA Comments at 19-21; NSBA Reply at 118-22; EDLINC Comments at 26-34.

**schools and libraries and for institutions in high cost areas, a national benchmark would have reduced the need for those additional discounts.**

**As alternatives to a national benchmark, EDLINC also suggested using the lowest commercial rate or TSLRIC to set rates. The Joint Board chose not to rely on TSLRIC, but modified the lowest commercial rate proposal by recommending that the Commission establish as the pre-discount price "the lowest price charged to similarly situated non-residential customers for similar services" (referred to as the "lowest corresponding price") offered by a particular carrier. We continue to believe that a national pre-discount price best meets the needs of schools and libraries because it offers a means of ensuring that rural areas have access to services comparable to those available in urban areas, at reasonably comparable rates, as required by Section 254(b)(3). Although the Joint Board's "lowest corresponding price" mechanism may ultimately reach the goal of Section 254(b)(3), in its present form that approach has several limitations and will require further clarification and modification to meet our concerns.**

**The fundamental problem with the lowest corresponding price approach is that it bases prices on the rates set by individual carriers in particular geographic regions. This means that prices are likely to vary significantly from place to place throughout the country. Aside from concerns about equity, this approach will result in schools and libraries in rural and other high cost areas paying higher rates. This point can be addressed through the Joint Board's proposed high cost subsidy, but the Commission**

will need to pay particular attention to that issue to ensure that the resulting rates are truly affordable for rural schools and libraries.

Our second concern is that the Commission will have to define more clearly what is meant by "the lowest price charged to similarly situated nonresidential customers." This term could be defined very narrowly -- so narrowly, in fact, that it refers only to rates charged to other schools and libraries. Under such a narrow definition, providers might be free to establish excessively high pre-discount rates. Therefore, it must be clear that similarly situated customers includes eligible and non-eligible entities alike.

We believe that the pre-discount rates should be set based on broad criteria, to give schools and libraries the opportunity to take advantage of the lowest possible rates. This is why we suggested, and did not qualify, the term "lowest commercially-available" rates. We understand that the prices ordinarily charged by service providers may be based on a number of different factors, designed to ensure a profit after costs are taken into account. A service provider may, for instance, consider the volume of usage, the length of a contract, proximity to switching facilities, and other factors in setting prices. Those considerations should not be allowed to control prices in the present context, however, because the purpose of Section 254 is to ensure affordable service for eligible entities. Instead, the Commission should presume that if a service provider is willing to offer a rate to any customer, then that rate is profitable.

If the Commission is not prepared to adopt such a mechanism, then it must define the term "similarly situated" broadly, and should still ignore most of the factors

used by service providers in setting rates. For example, because school and library districts usually include a number of buildings scattered around a geographic area, the Commission should presume that geographic factors such as proximity to certain facilities are not relevant. In addition, because eligible entities will be users over the long term and do not go out of business, terminate service, or reduce the number of their installations abruptly, they should be presumed to be long-term customers. Indeed, we believe that the only valid criterion for making any distinctions among users is the total volume of usage of the entity, including all schools or libraries in a district, or members of a consortium. Thus, the lowest price charged to a similarly situated non-residential customer should be simply the lowest price charged to a user of roughly equivalent volume. Furthermore, if no other such customer is available for comparison, then the next lowest rate charged to any customer should apply.

Third, we believe that the Joint Board's proposal for addressing areas in which there is no competition imposes an unreasonable burden on schools and libraries. Rather than requiring schools and libraries to seek recourse from the Commission or a state commission, which is a time-consuming and costly process areas in which there is no competition should be treated as high cost areas. If there is no competition in an area, even the price offered to similarly-situated customers is likely to reflect the lack of competition and therefore result in a higher discounted price than would be available to schools and libraries in areas where there is competition. Just as a service provider's higher costs may render a rate unaffordable to schools and libraries, so may a service provider's recovery of monopoly rents.

Finally, we support the Joint Board's conclusion that all telecommunications carriers serving a geographic area should be required to provide service at the lowest corresponding price. We also understand the Joint Board's concern with the possibility of requiring service providers to serve areas outside their markets. We note, however, that we anticipate that in most instances schools and libraries will receive multiple bids in response to requests for proposals, and will select the lowest qualified bidder.<sup>10</sup> Reference to the lowest corresponding price should only be necessary in two instances: (1) to verify that the offered price is at least as low as the lowest corresponding price; and (2) in those cases in which no bids were received, and a provider has been compelled to provide service at the lowest corresponding price. The definition of geographic area, on the other hand, is only relevant in the second case, since in the first instance the service provider voluntarily submitted a bid.

The definition of geographic area may also be relevant in the case of a consortium whose geographic extent is large enough that its members are served by providers in different areas. If the consortium does not receive any responses to a request for proposals, some provision must be made for establishing a price and for ensuring that all members of the consortium are served.

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<sup>10</sup> As we stated in the NSBA Reply at 23, schools and libraries should be free to reject low bidders on grounds permitted by local procurement rules, such as a past record of poor performance.

## **B. Determining the Discount Level.**

The Request for Comments requests additional information regarding methods for identifying high cost areas, and the measures of economic advantage that may be used for identifying economically disadvantaged schools and libraries. The measures the Joint Board has suggested using (unseparated loop costs, and school lunch program participation, respectively) may prove workable, but we do have a number of concerns regarding how those criteria are applied.

In addition, the Joint Board Recommendations are unclear in an important respect. The matrix appearing at paragraph 555 of the Recommendations establishes a stepped discount based on school lunch program participation and cost of service. The Recommendations then proceed, in two separate sections, to discuss "schools located in high cost areas" (paras. 557-560) and "economically disadvantaged schools" (paras. 567-570), and suggest that the Commission request comments on how to define these two types of discounts. We believe that the Joint Board intended to establish a single stepped discount that could be based on the school lunch program and the cost of service, but the document could also be read as suggesting the same stepped discount, plus separate, additional discounts for schools and libraries that are in high cost areas or are economically disadvantaged. The Commission should clarify whether the discussions at paras. 557-560 and 561-570 are intended to refer to separate discounts over and above those provided by applying the matrix in paragraph 555.

**1. School Lunch Program Participation as General Model for all Schools.**

The Joint Board recommends that participation in the national school lunch program be the criterion upon which discounts are based. EdLiNC concurs that this can be a reasonable proxy for affordability in many instances. It is used by a majority of public schools, thereby making it no more administratively burdensome for those schools. We also concur that it is important to ensure that all schools and libraries should receive a discount that makes services affordable and that the stepped approach accomplishes this goal.

However, we recognize that there are some circumstances in which school lunch participation is not the best indicator of poverty or an institution's ability to afford services, and that these instances will need to be addressed. Specifically, some public schools do not participate, particularly in rural areas where parents are reluctant to define themselves as impoverished. In addition, high school students have been historically undercounted and there may also be undercounting of transient populations. Furthermore, there are special concerns surrounding the use of school lunch data in connection with private schools, where almost 80% do not participate in the program, and libraries.

**a. Public Schools.**

With respect to public schools, we believe that these circumstances can be addressed in the following ways:

(1) As is stated in the Recommendations, we concur with the Joint Board's proposal that schools or districts that do not participate in the



school lunch program need only certify the percentage of their students who would be eligible for the program if the school district did participate. We further believe that this certification process should be non-burdensome. We recommend that schools or districts should be allowed to use proxy models to determine the number of students eligible. Many states and schools have already developed workable and acceptable proxies for extrapolating a school lunch count, including the proxies currently available under the Improving America's Schools Act of 1994 (IASA)<sup>11</sup> and the corresponding regulations.<sup>12</sup> In addition, another simple proxy could include an examination of family income by census data, by either county school district, library service area, or zip code to identify a count that mirrors school lunch data.

(2) Public institutions should also be able to extrapolate from elementary school data (such as sibling count or a "feeder pattern" count) to rectify undercounting of high school students.

(3) Undercounting in rural areas is a known factor. Use of proxies should take this into consideration. Formulas to correct for this discrepancy may already be in place in many states and should be allowed for counting purposes under the FCC's discount rules.

b. Private Schools and Libraries.

The school lunch program faces a number of unique difficulties when applied to private schools and libraries. Specifically, school lunch participation does not

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<sup>11</sup> Pub. L. 103-382, Title I, Section 1113 (a)(5).

<sup>12</sup> 34 C.F.R. § 200.21.

always adequately measure the issue of an institution's ability to afford services. However, in most cases, adequate proxies can be established for private schools and libraries. While no solution is perfect, we believe that the following mechanisms offer a minimally burdensome approximation of affordability.

(1) If the community served by a private school is similar to the community served by the public schools in whose district or attendance area they are located, then the private school or library should be able to use the same discount as the public school or district. "Similar to the community served by the public schools in whose district or attendance area they are located" means that a private school draws 60% or more of its students from the public school district or the public school attendance area in which the private school is located. This may also be applicable for some libraries, however, as ALA has noted in its filing, the poverty factor included in LSTA would be less burdensome and may provide a more accurate proxy for calculating low income discounts.

(2) If the community served by the private school is not similar to the community served by the public schools in whose district or attendance area they are located or they do not wish to use the public schools as a proxy, then a private school or library could use any of the proxies currently allowable under IASA and the corresponding regulations<sup>13</sup> or a proxy that examines family income by using current census data by either county, school or library service area, or zip code to

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<sup>13</sup> Id.

identify a count that mirrors school lunch data. As noted above, libraries would be expected to use data derived from that used to calculate the LSTA poverty factor.

(3) While schools and libraries would not have to submit the verification data directly to the FCC, this data should be available for audit.

c. Hardship Appeals Process.

We recognize that no formula will be absolutely perfect and that there may be circumstances in which a school or library in great need does not receive an adequate discount. We therefore recommend that a hardship appeals process be established to allow eligible entities to request additional discounts (ranging upwards to the maximum discount of 90%).

2. Equalization of High Cost Areas.

We believe that prices in high cost areas should be supported so that the cost of purchasing telecommunications services in low cost areas is reasonably comparable to the cost in high cost areas. Indeed, we believe that Section 253(b)(3) requires that high cost areas have access and rates reasonably comparable to those in low cost areas. The incumbent LEC's unbundled loop costs may be a reasonable proxy for high cost areas, but the critical issues are the threshold for qualifying for a high cost discount, and the difference between the amounts of the discounts for high and low cost areas.

For example, the Joint Board does not explain why it decided to recommend that areas whose costs are in the top 7% qualify as high cost, or why it established only three cost categories. In addition, the maximum difference in the discounts

between high and low-cost areas is only 10%; in other cases, the difference is only 5% or zero. This implies that prices in high cost areas are typically no more than 10% higher than in low cost areas. We doubt that this is the case, and believe that rates vary by much more. For example, schools in Vancouver, Washington, pay about \$125 per month for a T-1 line, while schools in rural White Salmon, Washington, pay \$2,100 per month for the same service -- a difference of over 1600%.<sup>14</sup>

The Joint Board's general approach may be satisfactory, but the Commission must examine the high cost discount in much more detail to ensure that rural schools and libraries are able to obtain rates and services comparable to their urban counterparts. This also requires considering the question of support for Internet access in areas that require a toll call. Such distance-sensitive charges have been and could continue to be barriers to Internet access for many schools and libraries.

#### **C. Standards for Bona Fide Requests.**

EDLINC has always argued that the standards for determining whether a bona fide request has been made should be de minimis. School and library districts, as well as regional and state authorities, all have procurement procedures to ensure that public funds are expended only by authorized personnel. The procurement of telecommunications services is subject to these procedures, and no additional procedures are really necessary.

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<sup>14</sup> Survey conducted by the American Association of School Administrators, August 1996.

Nevertheless, we understand that both the Joint Board and the telecommunications industry are concerned with the potential for waste and fraud. These are legitimate concerns, and modest provisions addressing them may be appropriate. The Commission should ensure, however, that any requirements that it does adopt are not so burdensome as to discourage schools and libraries from requesting discounted services, or susceptible to abuse by entities seeking, for whatever reason, to interfere with a school or library's procurement of such services. For example, requiring that schools and libraries certify that they have a technology plan in place should not be a complicated process and service providers and other third parties should not be involved in the certification or review processes.

In addition, the Commission should streamline the administrative procedure and paperwork burden required of schools and libraries to: (i) place a bona fide request; (ii) design and manage a competitive bid process; (iii) report to the universal service fund administrator; and develop and maintain accountability records for audit. Such processes should in no way serve as disincentives for schools and libraries to gain access to the full discounts for which they are lawfully eligible, nor should they increase institutional costs, which would reduce affordability.

Finally, to ensure simplicity and uniformity, we urge the Commission to develop a short, simple self-certification form addressing eligibility.

#### **D. Prohibition on Resale.**

As noted in the Joint Board Recommendations, EDLINC is among the parties that have recommended that the statutory prohibition on resale be limited to resale

for profit. We understand the reasons for which the Joint Board rejected this proposal. Nevertheless, we believe it would be beneficial for the Commission to make exceptions for cases in which a user is using discounted services for an educational purpose. We suggest that eligible entities be permitted to apply to the Commission or to the fund administrator for waivers in certain cases. For example, an eligible entity may be engaged in a joint conducting program or project with an ineligible entity, although the overall purpose of the program or project is clearly part of the mission of the eligible entity. In such cases, requiring accurate proration of use or unbundling of costs may not be practical or even possible. Furthermore, denying a discount even if proration or unbundling were possible would essentially limit the scope of an eligible entity's activities. Waiving the prohibition on resale in such cases would advance the same goals as the Joint Board endorsed in its discussion of the importance of encouraging the growth of consortia.<sup>15</sup> Waivers may also be appropriate even if there is no joint program involved, if the purchaser of the services is using them for a clearly defined and segregable educational purpose.

**E. Private Contract Rates.**

Paragraph 572 of the Joint Board Recommendations appears to state that schools and libraries that have negotiated rates for service should be allowed to use those rates as the pre-discount price:

If the Commission permits schools and libraries to use the best negotiated contract rate for which they can bargain in the market as the pre-discount price to which a discount would apply, it would seem reasonable that such discounts

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<sup>15</sup> See Joint Board Recommendations at ¶ 596.

would also apply to contracts negotiated prior to the adoption of rules under Section 254(h). In both cases, schools and libraries with budgetary constraints have strong incentives to secure the lowest rates that they can as the pre-discount price, and the proposed discount methodology would apply a discount on that pre-discount rate.

We strongly support this position.<sup>16</sup> The sentence immediately following the language quoted above, however, could be interpreted as implying the opposite when it recommends that "the Commission not require any schools or libraries that had secured a low price on service to relinquish that rate simply to secure a slightly lower price produced by including a large amount of federal support." We believe that this sentence means that a school or library should not be expected to abandon negotiated contract rates to obtain discounted rates based on prevailing pre-discount rates; instead, schools and libraries should be able to obtain the larger discounts that would result from basing the discounted rate on the negotiated contract rate. The Commission should clarify this point to eliminate any ambiguity.

#### **F. Fund Administration.**

The Joint Board has recommended that the universal service fund be administered by a neutral third party, and that the National Exchange Carrier Association ("NECA") be designated as the temporary administrator. We concur that a neutral third party should be appointed to administer the fund, but we also believe that schools and libraries should be fairly represented in the membership of any body that is appointed as the administrator. It is critical that schools and libraries have a voice in the implementation of the Commission's final rules even during the interim

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<sup>16</sup> NSBA Comments at 19-20; EDLINC Comments at 34-35.

period before a permanent administrator is named. In fact, such representation during the interim period is particularly important, since many issues will be addressed that may have lasting effects. Therefore, we urge the Commission to ensure that any permanent or temporary fund administrator include equitable representation from the school and library communities in any matter that relates to universal service for schools and libraries.

We also believe that the concerns of schools and libraries must be fairly considered as part of the recommended review process. We concur that a Joint Board should be appointed no later than January 1, 2001, to revisit the definition of universal service. We also believe, however, that the fund administrator or the Joint Board should conduct periodic reviews at least every four years to ensure that the purposes of Section 254 regarding access to and affordability of telecommunications for schools and libraries continue to be met.<sup>17</sup>

Finally, we urge the Commission to ensure that its final rules adequately take into account the effects of possible anomalies that may arise in the administration and distribution of universal service funding for schools and libraries. For example, it is conceivable that certain states, through various circumstances, could be entitled to such large contributions from the universal service fund that the \$2.25 billion cap could be inadequate to fairly meet the requirements of schools and libraries in other states. For example, if a populous state, such as New York, were to aggregate all the demand in the state and certify itself as a single eligible entity, it might draw off a

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<sup>17</sup> See NSBA Comments at 17.



disproportionately large amount of support every year. Likewise, Alaska, and perhaps some other states with large high cost areas, could draw off disproportionately large sums because of the large difference between their average costs and those of other states. The Commission should determine whether other anomalous situations exist, and consider special methods of ensuring that schools and libraries in such states receive discounts without harming the interests of schools and libraries in other parts of the country.